

April 20, 1955

Attorney General's

Richard C. Duncon  
Assistant Attorney General

SB-11 as Amended

James J. Barry, Commissioner  
Department of Public Welfare  
Annex, Concord

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CONCORD, N.H.

Dear Mr. Barry:

You have inquired whether the above mentioned Senate Bill would place responsibility for the tuition of a child living in a foster home upon the foster home where the child was not domiciled within this state at the time of its placement. My answer to this question is in the affirmative. The amendment to section 51, chapter 137 of the Revised Laws as it appears in the Senate Journal of Thursday, April 7, 1955, states in part:

"If the child was not domicile in this state when so placed, the home for children together with the parents or the guardian of such child, shall be jointly and severally liable for said tuition to be recovered in an action of case."

This language is quite specific and places the liability, jointly and severally, upon the parents and the home. If the child does not have a domicile within the state it would normally follow that the parents are without the state and recourse would be had against the home upon its severable liability.

You further inquire whether a minor child living with a foster family has his domicile with that family. The answer to this is "no." The domicile of a child is derived from that of his natural parent. It is the general rule that an infant cannot of his own volition acquire a domicile and his domicile will be that of his father, if legitimate, and of his mother at the time of his birth, if illegitimate.

The term "domicile" is a word which has acquired an exact meaning and should not be confused with the term "inhabitants" or "residence". While the determination of any person's domicile will naturally depend upon the precise circumstances of the case

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It may be stated as a general rule that a child's domicile will depend upon that of his natural parent although there may be circumstances where the child will not take as his own an after acquired domicile of his parent. However, I do not believe that it is necessary for the answer of your limited question to go into a multitude of possible situations and complications.

You further inquire as to the effect upon the domicile of a child when custody is awarded to the Commissioner of Public Welfare. This does not, in and of itself, affect the child's domicile which he has acquired derivatively from his parent. It can easily be seen that many problems would arise in determining the domicile of such a child where the parents may have had one or more changes of domicile during the period in which the child is in the custody of the Department.

I should like to comment upon one of the statements as contained in your letter whereby you ask in part whether the child's "domicile would depend upon the residence of the parent having custody." Residence is one of the elements used when determining domicile but residence is not the sole determining factor as domicile, in its final analysis, is a state of mind, and this must be determined by extraneous facts, one of which, is residence.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCD:L